





## II

Effective August 1, 1992, the Board revoked petitioner's license pursuant to a stipulation of the parties signed by petitioner on January 13, 1992, in which petitioner "voluntarily stipulate[d] that he does not contest the complete truth and accuracy" of various allegations of the Accusation and Supplemental Accusation in Case No. D-4213. Petitioner did not contest that he engaged in sexual misconduct with female patients in 1988, in violation of Business and Professions Code section 726, to wit: he nuzzled the cleavage of three different female patients and kissed their nipples after completing breast augmentation surgery on the women and while the women were still under the effects of anesthesia; he kissed the lips of a female patient while massaging the woman's breasts after completing breast augmentation surgery on the woman and while the woman was still under the effects of anesthesia; he inappropriately touched the breasts of female patients; and he made inappropriate sexually suggestive comments to female patients. Petitioner did not contest that this conduct constituted gross negligence in violation of Business and Professions Code section 2234(b). In addition, petitioner did not contest that he allowed an unlicensed person in his employ to engage in the practice of medicine on more than one occasion in 1987 and 1988, in violation of Business and Professions Code section 2264.

The revocation was stayed, and petitioner was placed on probation for five years, with terms and conditions, including a requirement that petitioner serve a 90-day suspension from the practice of medicine; undergo a psychiatric evaluation and undergo treatment if required; submit a plan for monitoring of petitioner's practice; have a third party present while examining or treating female patients; take continuing education courses related to plastic and reconstructive surgery of at least 40 hours per year for each year of probation in addition to the continuing education requirements for relicensure; take and complete a course in medical ethics; and comply with the standard terms of probation.

Petitioner's probation is scheduled to expire on August 1, 1997. Petitioner has not previously applied for modification or termination of probation.

## III

Petitioner is in solo private practice; his practice consists of general surgery as well as plastic and reconstructive surgery. Petitioner stated that his practice is more cosmetic than reconstructive. About 25 to 30 percent of his practice involves breast surgery; the remainder includes body contour (liposuction); ear surgery; face, nose and eyelid surgery; and burn and other reconstructive surgery. Petitioner sees 60 to 75 patients per week. About 90 percent of petitioner's patients are female; of these, 80 percent are over the age of 14.

#### IV

Petitioner was board certified in surgery in 1964 and in plastic surgery in 1971. Petitioner serves on the voluntary faculty of the University of California, San Diego Medical School. Petitioner is a member of the American College of Surgeons and the American Plastic and Reconstructive Surgeons Association.

#### V

Petitioner is seeking the early termination of his probation. Petitioner has complied with the terms of his probation, as follows:

A. Petitioner served his 90-day suspension from the practice of medicine from August 1, 1992 to October 31, 1992.

B. Petitioner underwent a psychiatric evaluation in 1992, with no problems and no requirement that petitioner undergo psychiatric treatment.

C. Petitioner has been monitored in his medical practice throughout the period of probation, as required.

D. Petitioner has had a third party present at all times while examining or treating female patients. Petitioner's office staff members submitted declarations attesting to the "stand by" policy at petitioner's office, wherein female office staff are called in to be present during examinations and treatment of female patients.

E. Petitioner has taken at least 65 hours of continuing medical education per year for each year of probation, which includes the 40 hours of additional continuing medical education required by the terms of probation. Petitioner averaged 80 hours of continuing medical education in 1992, 1993 and 1994.

F. Petitioner enrolled in and successfully completed an approved Ethics course on a date not established by the evidence.

G. Petitioner has obeyed all local state and federal laws; has submitted quarterly affidavits concerning compliance with the conditions of probation; has complied with the Division's surveillance program; and has appeared for and participated in interviews with the Division's Medical Consultant.

Cynthia Brandenburg, Senior Investigator for the Board and petitioner's Probation Surveillance Officer, has recommended that petitioner's probation be terminated early. In her Probation Compliance Report dated March 27, 1995, Brandenburg

noted that petitioner has set up safeguards to prevent problems from happening and has complied with the conditions of probation.

#### VI

At hearing, petitioner denied engaging in sexual misconduct with female patients. Petitioner stated that he never admitted sexual misconduct in the Stipulation which he signed in 1992; rather, he chose not to contest the allegations without making any admissions. Petitioner further stated that he made an "economic decision" to settle the case. Petitioner acknowledged that he agreed to a five year period of probation; however, he was told at the time he entered into the Stipulation that the law permitted him to petition for early termination of probation after two years, which is what petitioner has done.

#### VII

Petitioner wishes to terminate his probation at this time because of the economic hardship he has experienced while on probation. Petitioner is especially concerned that when an individual calls the "hotline" to obtain information about his license discipline, virtually all of the terms of the stipulation are disclosed; he is concerned about the negative impact on his reputation in the community arising out of the charges of gross negligence and sexual misconduct.

#### VIII

Although petitioner's compliance with his Board probation has been satisfactory thus far, petitioner has not established good cause for early termination of his probation. The charges in the original Accusation and Supplemental Accusation raised serious questions about petitioner's professional ethics and ability to comply with the standards of practice. Petitioner agreed to the five year probationary period as part of the stipulation to resolve the disciplinary matter. Given petitioner's statements at hearing denying misconduct, it is difficult to evaluate petitioner's rehabilitation, in order to know whether petitioner has insight into the factors which led to the Board's disciplinary action in order to prevent such conduct from reoccurring. The potential problems associated with terminating probation at this time are compounded by the fact that petitioner is a sole practitioner. The continuation of monitoring of petitioner's practice, the additional continuing education required as a condition of petitioner's probation, and the requirement that petitioner have a third party present when examining or treating female patients, remain necessary to protect the public.

#### DETERMINATION OF ISSUES

Good cause does not exist at the present time to terminate petitioner's probation.

ORDER

The application of petitioner Richard M. Escajeda,  
M.D., for early termination of probation is denied.

Dated: July 14, 1995

Catherine B. Frink

CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings